

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5948

PETITION OF MICHELLE N. LESTER AND MICHAEL W. HERDER

(Hearing held January 14, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, March 11, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-9.45. The petitioners propose to construct an accessory structure (detached garage) in the side yard. Section 59-C-9.45 requires accessory structures to be located in the rear yard only.

The subject property is Lot 24, Block C, Massachusetts Avenue Highlands Subdivision, located at 9605 Sotweed Drive, Potomac, Maryland, 20854, in the R-200 Zone (Tax Account No. 2506781).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 22 x 24 foot accessory structure/detached garage in the northwest corner of the property.
2. The petitioners testified that their property is a shallow, pipe-stemmed lot that is 19,802 square feet. The lot is substandard for the R-200 Zone. The petitioners testified that because of the shallowness of their lot, the property does not have a rear yard. See, Exhibit No. 4(a) [survey plat]. The petitioners testified that although other lots in the subdivision are also pipe-stemmed, those lots are significantly larger than their property. See, Exhibit No. 8 (zoning vicinity map).
3. The petitioners testified that the proposed structure meets all of the required setbacks and that it can not be located elsewhere on the property without a variance.
4. The petitioners testified that the proposed structure will be built of materials that match their residence and that it will be screened by an existing fence and trees. The petitioners testified that they had spoken with their neighbors and that their neighbors have no objections to the new construction.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioners' property is shallow, pipe-stemmed lot. The lot is 19,800 square feet and it is substandard for the R-200 Zone. The proposed garage will be located in the northwest corner of the property and meets the required setbacks for the zone. The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the regulations will result in practical difficulties for the property owners.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the construction of an accessory structure/detached garage are the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed construction will not materially impact the view from the neighboring properties and will be screened by an existing fence and trees. The Board further finds that the proposed construction of a detached garage will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variances to permit the construction of an accessory structure/detached garage in the side yard are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 5(a) through 5(f).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 11th day of March, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party

to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.